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The Honorable Lonny R. Suko

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

OCT 11 2005

JAMES R. LARSEN, CLERK
DEPUTY
YAKIMA, WASHINGTON

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

VAN WELL NURSERY, INC., a
Washington corporation, HILLTOP
NURSERIES, LLC, a Michigan limited
liability company,

Plaintiffs,

v.

MONY LIFE INSURANCE COMPANY, a
New York corporation; A/B HOP FARMS,
INC., a Washington corporation;
BENNETT G. BRULOTTE and TRACY
A. BRULOTTE, individually and their
marital community, WALLA WALLA
PARCEL NO. 31-07-23-11-00-02;

Defendants.

MONY LIFE INS. CO., a N.Y. corp.,

Third Party Plaintiff,

v.

NATIONAL LICENSING ASSOC., LLC,
a Washington limited liability company
(f/k/a NURSERY LICENSING ASSOC.,
LLC),

Third Party Defendant.

CAUSE NO. CV-04-0245-LRS

STIPULATED
ORDER GOVERNING
CONFIDENTIALITY

STIPULATED ORDER GOVERNING CONFIDENTIALITY

STIPULATED ORDER GOVERNING CONFIDENTIALITY

This case having been designated by one or more of the parties as a matter involving intellectual property and requiring, during discovery and during trial, the disclosure of proprietary or trade secret information, as well as confidential business information, and it appearing to the Court that such designation should be approved, it is accordingly ORDERED:

1. **CONFIDENTIAL INFORMATION.** Any document produced by any party herein to any other party herein may be designated as confidential within the meaning of this order by stamping the word "CONFIDENTIAL" upon the face of such documents. Other information provided through discovery may be similarly designated as "CONFIDENTIAL." Any document designated "CONFIDENTIAL" and all information contained in the document (collectively **CONFIDENTIAL INFORMATION**), shall not be utilized by any opposing party, or the party's agents or employees, except as permitted by the terms of this Order.

2. **CONFIDENTIAL ATTORNEY'S EYES ONLY.** To protect against the unnecessary disclosure of particularly sensitive information, any party may also designate in writing or by clearly designating portions of CONFIDENTIAL INFORMATION as "CONFIDENTIAL ATTORNEY'S EYES ONLY" (**CONFIDENTIAL ATTORNEY'S EYES ONLY**). CONFIDENTIAL ATTORNEY'S EYES ONLY material may not be disclosed to any person other

1 than counsel or counsel's third-party independent expert witness without either
2 obtaining the consent of the party which produced such material, or after
3 compliance with the procedures set forth in Paragraph 5, *Decertification*, regarding
4 objections to confidentiality designations. If CONFIDENTIAL ATTORNEY'S
5 EYES ONLY is to be shared with a third-party independent expert witness, that
6 witness must first sign a confidentiality agreement in the form contained in
7 Paragraph 7. CONFIDENTIAL ATTORNEY'S EYES ONLY is to be considered a
8 subset of CONFIDENTIAL INFORMATION, as described in Paragraph 1 of this
9 Agreement; unless this Agreement specifically states to the contrary, all provisions
10 of this Agreement relating to CONFIDENTIAL INFORMATION shall also apply
11 to CONFIDENTIAL ATTORNEY'S EYES ONLY.
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16 **3. Deposition and Trial Testimony.** Deposition and trial testimony may
17 be designated either "CONFIDENTIAL INFORMATION" or "CONFIDENTIAL
18 ATTORNEY'S EYES ONLY" at the time the testimony is taken.
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20 (i) **Deposition.** From the time of any deposition until thirty (30) days
21 after receipt of the transcript, the entire deposition will be treated as
22 CONFIDENTIAL INFORMATION. Within thirty (30) days of receipt of the
23 transcript, by a written notice to all other parties, the party must identify the
24 specific pages of the transcript it chooses to be designated either
25 "CONFIDENTIAL INFORMATION" or "CONFIDENTIAL ATTORNEY'S
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1 EYES ONLY". After designation, only pages designated as CONFIDENTIAL
2 INFORMATION will continue to be subject to this agreement. In the event that
3 during the course of a deposition CONFIDENTIAL INFORMATION is to be
4 either presented to or solicited from any person, then only counsel for each party,
5 as well as third party experts for each party, is allowed to remain in the room. In
6 the event that CONFIDENTIAL ATTORNEY'S EYES ONLY is solicited in a
7 deposition, by means of either live testimony or an exhibit, the room shall be
8 cleared of all spectators and all parties excepting the party offering the evidence.
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11 (ii) **Trial.** Evidence may be presented at trial that has either been
12 designated by either party as either "CONFIDENTIAL INFORMATION" as
13 described in Paragraph 1 or "CONFIDENTIAL ATTORNEY'S EYES ONLY" as
14 described in Paragraph 2. In the event that CONFIDENTIAL INFORMATION is
15 offered at trial, whether by live testimony or the production of exhibits, the
16 courtroom shall be cleared of all persons except parties, counsel for parties and
17 witnesses who have signed a confidentiality agreement in the form provided in
18 Paragraph 7. In the event that CONFIDENTIAL ATTORNEY'S EYES ONLY
19 information is offered at trial, either through live testimony or as an exhibit, with
20 the permission of the Court the courtroom shall be cleared of all spectators and all
21 parties excepting the party offering the evidence. Counsel for each party, as well as
22 third party experts for each party, are allowed to remain in the courtroom.
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1 4. **Identification of Persons.**

2 (i) CONFIDENTIAL INFORMATION shall not be disclosed to any
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4 person other than: (1) inside and outside counsel for any party to this proceeding,
5 including necessary paralegal, secretarial and clerical personnel assisting counsel;
6 (2) the principal parties; (3) qualified persons taking testimony involving such
7 documents or information and necessary stenographic and clerical personnel (e.g.,
8 court reporters); (4) trial or deposition witnesses employed or retained by any party
9 producing the CONFIDENTIAL INFORMATION; (5) *bona fide* experts (and their
10 employees) employed or retained with respect to this action by any party or their
11 counsel; and (6) this Court. CONFIDENTIAL INFORMATION received by any
12 person in the above-numbered categories shall be used only for purposes of this
13 litigation and for no other purpose.
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17 (ii) CONFIDENTIAL ATTORNEY'S EYES ONLY shall not be
18 disclosed to any person other than: (1) inside and outside counsel for any party to
19 this proceeding, including necessary paralegal, secretarial and clerical personnel
20 assisting counsel; (2) qualified persons taking testimony involving such documents
21 or information and necessary stenographic and clerical personnel (e.g., court
22 reporters); (3) trial or deposition witnesses employed or retained by any party
23 producing the CONFIDENTIAL ATTORNEY'S EYES ONLY; (4) *bona fide*
24 experts (and their employees) employed or retained with respect to this action by
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1 any party or their counsel; and (5) this Court. CONFIDENTIAL ATTORNEY'S
2 EYES ONLY received by any person in the above-numbered categories shall be
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4 used only for purposes of this litigation and for no other purpose.

5 **5. Decertification.** Nothing in this Protective Order shall prevent a
6 receiving party from contending that any or all CONFIDENTIAL
7 INFORMATION is not confidential. Any receiving party may, at any time, request
8 the producing party to cancel the CONFIDENTIAL INFORMATION designation
9 with respect to any document, object and/or information, and to agree that
10 thereafter such document, object and/or information is to be no longer subject to
11 the provisions of this Order. Additionally, any receiving party may, at any time,
12 request that the CONFIDENTIAL ATTORNEY'S EYES ONLY designation of
13 any document be cancelled or changed to CONFIDENTIAL INFORMATION.
14 Such requests shall be written, shall be served on counsel for the producing party
15 and shall particularly identify the CONFIDENTIAL INFORMATION which the
16 receiving party contends is not confidential and the reasons supporting its
17 contentions. Such request will become effective thirty (30) days after the request is
18 served on the producing party unless the producing party moves for a further
19 Protective Order. If a motion for a further Protective Order is served within the
20 thirty (30)-day period, the document or information for which confidentiality is in
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1 dispute shall remain subject to this Protective Order until the motion is considered
2 by the Court.

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4 6. **Nonacquiescence.** A failure of a receiving party to challenge a claim
5 of confidentiality shall not constitute acquiescence to such claim if a question of
6 compliance with this Order is subsequently raised.

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8 7. **Confidentiality Agreement.** All employees, consultants, witnesses,
9 or their employees who, in the course of this case, see or hear of any documents
10 produced in the litigation, or any other matters containing CONFIDENTIAL
11 INFORMATION or who have access to any such documents or matters, shall be
12 required to sign a confidential agreement in the following form:
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14 I, _____, have read a copy of the Protective
15 Order Governing Confidentiality entered in this case. I recognize that
16 during my participation in the handling and development of this case
17 I may have occasion to read or hear of documents produced in this
18 litigation, or matters which are designated "CONFIDENTIAL", I
19 agree to use any such documents and matters solely in connection
20 with my participation in this case and for no other purpose. I
21 recognize that during my participation in the handling and
22 development of this case I may have occasion to read or hear of
23 documents produced in this litigation, or matters which are designated
24 "CONFIDENTIAL ATTORNEY'S EYES ONLY". I agree that, in
25 addition to using such information solely in connection with my
26 participation in this case, I will under no circumstances disclose such
27 information to any person except counsel who hired me. I agree to
abide by said Protective Order Governing Confidentiality in every
respect.

Date: _____

Signature

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2 Counsel for each party shall collect the signed confidentiality agreements
3 and retain them until the conclusion of the case, at which time copies shall be sent
4 to all parties.
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6 8. **Other Persons.** If this Court, for any reason, orders that
7 CONFIDENTIAL INFORMATION shall be made available to persons not
8 described in Paragraph 4, *Identification of Persons*, above, the CONFIDENTIAL
9 INFORMATION shall be accessible or disseminated to those persons subject to
10 this Protective Order, and they shall be considered subject to it.
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13 9. **Unauthorized Disclosure.** If CONFIDENTIAL INFORMATION is
14 disclosed to any person other than in a manner authorized by this Protective Order,
15 the person responsible for the disclosure shall immediately bring all pertinent facts
16 relating to the unauthorized disclosure to the attention of counsel for each party
17 and the Court, and without prejudice to other rights and remedies of any party may
18 have under this Protective Order or generally, the person responsible for the
19 unauthorized disclosure shall make every effort to prevent any further disclosure of
20 the CONFIDENTIAL INFORMATION by the person who was the recipient of
21 such information.
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25 10. **Sealed Documents.** If any document containing CONFIDENTIAL
26 INFORMATION produced in this litigation is introduced as an exhibit in this case
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1 prior to trial, or otherwise placed among the court papers in this case where it may
2 become of public record, the document shall be filed in a sealed envelope or
3 container, marked with the caption of this case, and a notice substantially as
4 follows:
5

6 **CONFIDENTIAL**

7
8 This envelope or container holds CONFIDENTIAL INFORMATION
9 and is filed under seal pursuant to the Protective Order and is not to
10 be opened except by direction of the Court or by written consent of
11 [name of party designating the information as Confidential].

12 At trial, exhibits containing CONFIDENTIAL INFORMATION, at the
13 request of the producing party and with the permission of the Court, shall be filed
14 under seal.

15 **11. Derivative Papers.** This Protective Order shall apply to all pleadings,
16 discovery papers, briefs, summaries, notes, abstracts, or other documents,
17 including memoranda or work product prepared by counsel, their staff, or
18 authorized outside consultants or experts which comprise, embody, summarize,
19 discuss, or quote from any documents produced in the litigation, or deposition
20 testimony transcripts or any other material which is designated
21 "CONFIDENTIAL."

22 **12. Reproduction and Copying.** CONFIDENTIAL INFORMATION
23 shall not be copied or reproduced except to the extent that copying or reproduction
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1 is reasonably necessary for the conduct of this lawsuit, and all such copies or
2 reproductions shall be marked with the same "CONFIDENTIAL" or
3 "CONFIDENTIAL ATTORNEY'S EYES ONLY" as the original document. All
4 copies or reproductions of CONFIDENTIAL INFORMATION shall be subject to
5 the terms of this Protective Order.
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8 13. **Admissibility.** Nothing in this Protective Order shall affect the
9 admissibility into evidence of CONFIDENTIAL INFORMATION, or abridge the
10 rights of any person to seek judicial review or to pursue other appropriate judicial
11 action with respect to any ruling made by the Court concerning the issues of the
12 status of CONFIDENTIAL INFORMATION documents.
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14 14. **Entry is Without Prejudice.** Entry of this Protective Order is without
15 prejudice to any party seeking an Order from this Court imposing further
16 restrictions on the dissemination of highly confidential documents, or seeking to
17 rescind, modify, alter or amend this Protective Order with respect to specific
18 documents.
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21 15. **Disposition Upon Completion.** After this case is finally completed,
22 including the exhaustion of all appeals, documents designated as
23 CONFIDENTIAL INFORMATION, and all other matters so designated, shall
24 either: (a) be returned to the producing party; or, (b) at the written direction of the
25 producing party, be destroyed, and the party authorized to destroy the documents
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1 shall provide a certificate to the producing party attesting to the destruction of the
2 documents.

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4 16. **Public Knowledge.** Notwithstanding the designation of
5 CONFIDENTIAL INFORMATION, any documents or testimony shall not be
6 confidential if a party can establish, on written motion for decertification under
7 Paragraph 5 *Decertification* of this order, that:
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9 (i) the information at the time of disclosure is in the public domain
10 by publication or otherwise;

11 (ii) the information, at any time, through no act or failure to act on
12 the part of the recipient party, becomes part of the public domain by publication or
13 otherwise;
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15 (iii) the information is already in the possession of any other party at
16 the time of disclosure by the producing party and was not acquired directly or
17 indirectly from the disclosing party; or
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19 (iv) the information is made available to any party by a third party
20 who obtained the information by legal means and without any obligation of
21 confidence to the party claiming its confidential nature.
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24 17. **Notice to Others.** The Clerk is ordered to show a copy of this
25 Protective Order to anyone desiring access to any of the court papers of this action.
26 The parties and their attorneys shall inform all witnesses, consultants, employees,
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1 agents, court reporters, or anyone else who may from time to time have access to
2 any CONFIDENTIAL INFORMATION of the substance of this Protective Order.

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4 18. **Nonparty Request.** In the event that any person who is in receipt of
5 another party's CONFIDENTIAL INFORMATION receives a written request,
6 subpoena, or court order seeking disclosure of the other party's CONFIDENTIAL
7 INFORMATION, such person shall immediately notify counsel for the party
8 whose CONFIDENTIAL INFORMATION is sought of the request, subpoena, or
9 court order and provide counsel with a copy of the same.
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12 19. **Survival.** The obligations and duties arising under this Protective
13 Order shall survive the termination of this action. This Court shall retain
14 jurisdiction over the parties to resolve any dispute respecting the improper use of
15 CONFIDENTIAL INFORMATION disclosed under terms of this Protective
16 Order.
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18 20. **Nonparty Production.** If any document, information and/or
19 deposition testimony is obtained from a person or entity not a party to this
20 litigation, such person or entity shall have the same right to designate any
21 document or deposition testimony as CONFIDENTIAL INFORMATION as a
22 party would have, and any document or deposition testimony so designated shall
23 be governed in all respects by this Protective Order, PROVIDED that the nonparty
24 likewise agrees to be bound by the terms of this Protective Order. The terms
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1 "party" and "parties" shall be deemed to include nonparties to the extent necessary
 2 or appropriate to implement the terms of this paragraph.
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4 21. **Party's Own Use.** Nothing in this Protective Order shall prevent a
 5 party from using or disclosing its own documents or information in any manner,
 6 and entry of this Protective Order shall not preclude the parties from mutually
 7 agreeing to the use or disclosure of CONFIDENTIAL INFORMATION other than
 8 as permitted by this Order.
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10 22. **Right to Question.** The parties shall use reasonable care to avoid
 11 designating any document or information as "CONFIDENTIAL INFORMATION"
 12 which has been published or can otherwise be shown to be in the public domain.
 13 This Protective Order is entered without prejudice to the right of any party to bring
 14 before the Court by motion the question of whether any particular information is or
 15 is not confidential. The person or party asserting confidentiality shall have the
 16 burden of establishing the same and the degree of protection required.

17 DATED this 11th day of ~~September~~ ^{October}, 2005.

18 
 19 JUDGE LONNY R. SUKO

20 Presented By:


21 STRATTON BALLEW PLLC
 22 Attorney for Plaintiffs and Third-Party Defendant

23 By: 
 24


25 Patrick H. Ballew, WSBA No. 16939
 26 Quinten S. Bowman, WSBA No. 35,064
 27

STIPULATED ORDER GOVERNING CONFIDENTIALITY

1 SCOTT A. BRUNS, ATTORNEY AT LAW

2
3 By:  Telephonic Approval
4 Scott Bruns, WSBA No. 15,060
5 Attorney for Plaintiffs and Third-Party Defendant

6 LANE POWELL PC

7
8 By: 
9 Charles R. Ekberg, WSBA No. 00342
10 David T. Hunter, WSBA No. 12685
11 Attorneys for Defendant MONY Life Ins. Co.
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